

FILED WITH LRC TIME: <u>11 a.m.</u>
JUL 10 2012
Donna Little REGULATIONS COMPILER

1 Cabinet for Health and Family Services

2 Office of Health Policy

3 (Amendment)

4 900 KAR 6:090. Certificate of Need filing, hearing, and show cause hearing.

5 RELATES TO: KRS 216B.010, 216B.085, 216B.086, 216B.090, 216B.095,
6 216B.990

7 STATUTORY AUTHORITY: KRS 194A.030, 194A.050, 216B.040(2)(a)1

8 NECESSITY, FUNCTION, AND CONFORMITY: KRS 216B.040(2)(a)1 requires the
9 Cabinet for Health and Family Services to administer Kentucky's Certificate of Need
10 Program and to promulgate administrative regulations as necessary for the program.
11 This administrative regulation establishes the requirements for filing, hearing, and show
12 cause hearings necessary for the orderly administration of the Certificate of Need
13 Program.

14 Section 1. Definitions. (1) "Cabinet" is defined by KRS 216B.015(5).

15 (2) "Certificate of Need Newsletter" means the monthly newsletter that is published
16 by the cabinet regarding certificate of need matters and is available on the Certificate of
17 Need web[Web] site at <http://chfs.ky.gov/ohp/con>.

18 (3) "Days" means calendar days, unless otherwise specified.

19 (4) "Formal review" means the review of applications for certificate of need which
20 are reviewed within ninety (90) days from the commencement of the review as provided
21 by KRS 216B.062(1) and which are reviewed for compliance with the review criteria set

1 forth at KRS 216B.040 and 900 KAR 6:070.

2 (5) "Nonsubstantive review" is defined by KRS 216B.015(17).

3 (6) "Office of Inspector General" means the office within the Cabinet for Health and
4 Family Services that is responsible for licensing and regulatory functions of health
5 facilities and services.

6 (7) "Office or clinic" means the physical location at which health care services are
7 provided.

8 (8) "Owner" means a person as defined in KRS 216B.015(21) who is applying for
9 the certificate of need and will become the licensee of the proposed health service or
10 facility.

11 (9) "Practice" means the individual, entity, or group that proposes to provide health
12 care services and shall include the owners and operators of an office or clinic.

13 (10) "Proposed findings" means the submission of a proposed final order by the
14 applicant for review and consideration by the hearing officer. [~~"Primarily" means a~~
15 ~~simple majority or something that occurs at least fifty-one (51) percent of the time.]~~

16 (11) "Proposed service area" means the geographic area the applicant proposes to
17 serve.

18 (12) "Public information channels" means the Office of Communication and
19 Administrative Review in the Cabinet for Health and Family Services.

20 (13) "Public notice" means notice given through:

21 (a) Public information channels; or

22 (b) The cabinet's Certificate of Need Newsletter.

23 (14) [~~"Qualified academic medical center" means:~~

1 ~~—(a) An institution of higher education which operates an accredited medical school~~
2 ~~within the Commonwealth of Kentucky;~~

3 ~~—(b) An institution, organization, or other entity which directly or indirectly owns or is~~
4 ~~under common control or ownership with an accredited medical school operated within~~
5 ~~the Commonwealth of Kentucky; or~~

6 ~~—(c) An individual, organization, entity, or other person which is qualified under~~
7 ~~Section 501(c)(3) of the Internal Revenue Code (26 U.S.C. 501(c)(3)) as a result of~~
8 ~~supporting or operating in support of an institution, organization, entity, or other person~~
9 ~~of a type or types referenced in paragraph (a) or (b) of this subsection.~~

10 ~~—(15)] "Secretary" is defined by KRS 216B.015(25).~~

11 (15) [(16)] "Show cause hearing" means a hearing during which it is determined
12 whether a person or entity has violated provisions of KRS Chapter 216B.

13 Section 2. Filing. (1) The filing of all documents required by this administrative
14 regulation shall be made with the Office of Health Policy, CHR Building, 4 WE, 275 East
15 Main Street, Frankfort, Kentucky 40621 on or before 4:30 p.m. eastern time on the due
16 date.

17 (2) Filings of documents, other than certificate of need applications and proposed
18 hearing reports, may be made by facsimile transmission if:

19 (a) The documents are received by the cabinet by facsimile transmission on or
20 before 4:30 p.m. eastern time on the date due; and

21 (b) An original document is filed with the cabinet on or before 4:30 p.m. eastern time
22 on the next business day after the due date.

23 (3) The Office of Health Policy shall endorse by file stamp the date that each filing is

1 received and the endorsement shall constitute the filing of the document.

2 (4) In computing any period of time prescribed by this administrative regulation, the
3 date of notice, decision, or order shall not be included.

4 (5) The last day of the period so computed shall be included, unless it is a Saturday,
5 a Sunday, or legal state holiday, in which event the period shall run until 4:30 p.m.
6 eastern time of the first business day following the Saturday, Sunday, or legal state
7 holiday.

8 Section 3. Hearing. (1)(a) Hearings on certificate of need matters shall be held by
9 hearing officers from the Cabinet for Health and Family Services, Health Services
10 Administrative Hearings Branch.

11 (b) A hearing officer shall not act on any matter in which the hearing officer has a
12 conflict of interest as defined in KRS 45A.340.

13 (c) Any party may file with the cabinet a petition for removal based upon a conflict of
14 interest supported by affidavit.

15 (2) The hearing officer shall preside over the conduct of each hearing and shall
16 regulate the course of the proceedings in a manner that shall promote the orderly and
17 prompt conduct of the hearing.

18 (3) Notice of the time, date, place, and subject matter of each hearing shall be:

19 (a) Mailed to the applicant and all known affected persons providing the same or
20 similar service in the proposed service area not less than ten (10) days prior to the date
21 of the hearing;

22 (b) Published in the Certificate of Need Newsletter[newsletter], if applicable; and

23 (c) Provided to members of the general public through public information channels.

1 (4) A public hearing shall be canceled if each person who requested the hearing
2 withdraws the request by giving written notification to the Office of Health Policy that the
3 hearing is no longer required. The consent of affected persons who have not requested
4 a hearing shall not be required in order for a hearing to be canceled.

5 (5) Any dispositive motion made by a party to the proceedings shall be filed with the
6 hearing officer at least three (3) working days prior to the scheduled date of the hearing.

7 (6) The hearing officer may convene a preliminary conference.

8 (a) The purposes of the conference shall be to:

- 9 1. Formulate and simplify the issues;
10 2. Identify additional information and evidence needed for the hearing; and
11 3. Dispose of pending motions.

12 (b) A written summary of the preliminary conference and the orders thereby issued
13 shall be made a part of the record.

14 (c) The hearing officer shall:

- 15 1. Tape record the conference; or
16 2. If requested by a party to the proceedings, allow a stenographer to be present at
17 the expense of the requesting party.

18 (d) During the preliminary conference, the hearing officer may:

- 19 1. Instruct the parties to:
20 a. Formulate and submit a list of genuine contested issues to be decided at the
21 hearing;
22 b. Raise and address issues that can be decided before the hearing; or
23 c. Formulate and submit stipulations to facts, laws, and other matters;

2. Prescribe the manner and extent of the participation of the parties or persons who will participate;

3. Rule on any pending motions for discovery or subpoenas; or

4. Schedule dates for the submission of prefiled testimony, further preliminary conferences, and submission of briefs and documents.

(7) At least five (5) days prior to the scheduled date of any nonsubstantive review hearings and at least seven (7) days prior to the scheduled date of all other hearings, all persons wishing to participate as a party to the proceedings shall file with the cabinet an original and one (1) copy of the following for each affected application and serve copies on all other known parties to the proceedings:

(a) OHP - Form 3, Notice of Appearance, incorporated by reference in 900 KAR 6:055;

(b) OHP - Form 4, Witness List, incorporated by reference in 900 KAR 6:055; and

(c) OHP - Form 5, Exhibit List, incorporated by reference in 900 KAR 6:055 and attached exhibits.

(8)(a) If a hearing is requested on an application which has been deferred from a previous cycle and for which a hearing had previously been scheduled, parties shall:

1. File a new OHP - Form 3, Notice of Appearance; and

2. Either:

a. Incorporate previously-filed witness lists (OHP - Form 4) and exhibit lists (OHP - Form 5); or

b. File an amended OHP - Form 4 and OHP - Form 5.

(b) A new party to the hearings shall file an original OHP - Form 3, OHP - Form 4,

1 and OHP – Form 5.

2 (c) Forms shall be filed in accordance with subsection (7) of this section.

3 (9) The hearing officer shall convene the hearing and shall state the purpose and
4 scope of the hearing or the issues upon which evidence shall be heard. All parties
5 appearing at the hearing shall enter an appearance by stating their names and
6 addresses.

7 (10) Each party shall have the opportunity to:

8 (a) Present its case;

9 (b) Make opening statements;

10 (c) Call and examine witnesses;

11 (d) Offer documentary evidence into the record;

12 (e) Make closing statements; and

13 (f) Cross-examine opposing witnesses on:

14 1. Matters covered in direct examination; and

15 2. At the discretion of the hearing officer, other matters relevant to the issues.

16 (11) A party that is a corporation shall be represented by an attorney licensed to
17 practice in the Commonwealth of Kentucky.

18 (12) The hearing officer may:

19 (a) Allow testimony or other evidence on issues not previously identified in the
20 preliminary order which may arise during the course of the hearing, including any
21 additional petitions for intervention which may be filed;

22 (b) Act to exclude irrelevant, immaterial, or unduly repetitious evidence; and

23 (c) Question any party or witness.

1 (13) The hearing officer shall not be bound by the Kentucky Rules of Evidence.

2 Relevant hearsay evidence may be allowed at the discretion of the hearing officer.

3 (14) The hearing officer shall have discretion to designate the order of presentation
4 of evidence and the burden of proof as to persuasion.

5 (15) Witnesses shall be examined under oath or affirmation.

6 (16) Witnesses may, at the discretion of the hearing officer:

7 (a) Appear through deposition or in person; and

8 (b) Provide written testimony in accordance with the following:

9 1. The written testimony of a witness shall be in the form of questions and answers
10 or a narrative statement;

11 2. The witness shall authenticate the document under oath; and

12 3. The witness shall be subject to cross-examination.

13 (17) The hearing officer may accept documentary evidence in the form of copies of
14 excerpts if:

15 (a) The original is not readily available;

16 (b) Upon request, parties are given an opportunity to compare the copy with the
17 original; and

18 (c) The documents to be considered for acceptance are listed on and attached to
19 the party's Exhibit List (OHP - Form 5) and filed with the hearing officer and other
20 parties at least:

21 1. Seven (7) days before the hearing for formal review applications; or

22 2. Five (5) days before the hearing for nonsubstantive review applications.

23 (18) A document shall not be incorporated into the record by reference without the

1 permission of the hearing officer. Any referenced document shall be precisely identified.

2 (19) The hearing officer may take official notice of facts which are not in dispute or
3 of generally-recognized technical or scientific facts within the agency's special
4 knowledge.

5 (20) The hearing officer may permit a party to offer, or request a party to produce,
6 additional evidence or briefs of issues as part of the record within a designated time
7 after the conclusion of the hearing. During this period, the hearing record shall remain
8 open. The conclusion of the hearing shall occur when the additional information is timely
9 filed or at the end of the designated time period, whichever occurs first.

10 (21) In a hearing on an application for a certificate of need, the hearing officer shall,
11 upon the agreement of the applicant, continue a hearing beyond the review deadlines
12 established by KRS 216B.062(1) and 216B.095(1).

13 (22) If all parties agree to waive the established decision date, the hearing officer
14 shall render a decision within sixty (60) days of the filing of proposed findings.

15 (23) The cabinet shall forward a copy of the hearing officer's final decision by U.S.
16 mail to each party to the proceedings. The original hearing decision shall be filed in the
17 administrative record maintained by the cabinet.

18 Section 4. Show Cause Hearing. (1) The cabinet may conduct a show cause
19 hearing on its own initiative or at the request of an affected person, to include hearings
20 requested pursuant to Humana of Kentucky v. NKC Hospitals, Ky., 751 S.W.2d 369
21 (1988), in order to determine if a person has established or is operating a health facility
22 or health service in violation of the provisions of KRS Chapter 216B or 900 KAR
23 Chapter 6 or is subject to the penalties provided by KRS 216B.990 for specific violations

1 of the provisions of KRS Chapter 216B.

2 (2) Unless initiated by the cabinet, in order for a show cause hearing to be held, a
3 request for a show cause hearing submitted by an affected person shall be
4 accompanied and corroborated by credible, relevant, and substantial evidence,
5 including an affidavit or other documentation which demonstrates that there is probable
6 cause to believe that a person:

7 (a) Has established, or is operating, a health facility or health service in violation of
8 the provisions of KRS Chapter 216B or 900 KAR Chapter 6; or

9 (b) Is subject to the penalties provided by KRS 216B.990 for specific violations of
10 the provisions of KRS Chapter 216B.

11 (3) Based upon the materials accompanying the request for a show cause hearing,
12 the cabinet shall determine if sufficient cause exists to conduct a hearing.

13 (4) The cabinet shall conduct a show cause hearing based on its own investigation
14 pursuant to an annual licensure inspection or otherwise which reveals a possible
15 violation of the terms or conditions which are a part of a certificate of need approval and
16 license.

17 (5) The cabinet shall also conduct a show cause hearing regarding terms and
18 conditions which are a part of a certificate of need approval and license at the request of
19 any person.

20 (6) The show cause hearing regarding the terms and conditions shall determine
21 whether a person is operating a health facility or health service in violation of any terms
22 or conditions which are a part of that certificate of need approval and license.

23 (7) Show cause hearings shall be conducted in accordance with the provisions of

1 Section 3 of this administrative regulation.

2 (8) If a show cause hearing is held, the individual or entity alleging the violation,
3 including the Cabinet, shall have the burden of establishing by a preponderance of
4 evidence the alleged violations. ~~[to be in violation of KRS Chapter 216B shall have the~~
5 ~~burden of showing that the individual or entity:]~~ The burden is met with evidence that
6 the charged entity:

7 (a) Has ~~[not]~~ established or is ~~[not]~~ operating a health facility or health service in
8 violation of the provisions of KRS Chapter 216B or 900 KAR Chapter 6; or

9 (b) Is not subject to the penalties provided by KRS 216B.990 for specific violations
10 of the provisions of KRS Chapter 216B.

11 (9)(a) ~~If [Except as provided by paragraph (b) or (c) of this subsection, if]~~ it is alleged
12 that an office or clinic offering services or equipment covered by the State Health Plan
13 was established or is operating in violation of KRS 216B.020(2)(a), the hearing officer
14 shall base his or her proposed findings of fact, conclusions of law, and proposed
15 decision on whether the clinic or office meets the physician exemption criteria set forth
16 in 900 KAR 6:135, Certificate of Need criteria for physician exemption. ~~[the evidence~~
17 ~~has established the following:~~

18 ~~— 1. The practice claiming the exemption is 100 percent owned in any organizational~~
19 ~~form recognized by the Commonwealth by the individual physician, dentist, or other~~
20 ~~practitioner of the healing arts or group of physicians, dentists, or other practitioners of~~
21 ~~the healing arts (hereinafter collectively referred to as "physician") claiming the~~
22 ~~exemption;~~

23 ~~— 2. The practice claiming the exemption primarily provides physician services (e.g.,~~

1 ~~evaluation and management codes) rather than services or equipment covered by the~~
2 ~~State Health Plan;~~

3 ~~— 3. Services or equipment covered by the State Health Plan which are offered or~~
4 ~~provided at the office or clinic shall be primarily provided to patients whose medical~~
5 ~~conditions are being treated or managed by the practice;~~

6 ~~— 4. A physician or physicians licensed to practice and practicing in Kentucky within~~
7 ~~the practice claiming the exemption are responsible for all decisions regarding the care~~
8 ~~and treatment provided to patients;~~

9 ~~— 5. Patients are treated on an outpatient basis and are not maintained overnight on~~
10 ~~the premises of the office or clinic;~~

11 ~~— 6. Services or equipment covered by the State Health Plan that are offered or~~
12 ~~provided at the office or clinic are related to the professional services offered to patients~~
13 ~~of the practice claiming the exemption;~~

14 ~~— 7. Major medical equipment in excess of the limits set forth in 900 KAR 6:030 is not~~
15 ~~being utilized without a Certificate of Need or other statutory or regulatory exemption;~~
16 ~~and~~

17 ~~— 8. Nothing in this section shall limit or prohibit the continued operation of an office or~~
18 ~~clinic that was established and in operation prior to January 31, 2006, and operating~~
19 ~~pursuant to and in accordance with the following:~~

20 ~~— a. Provisions of a Certificate of Need advisory opinion issued specifically with~~
21 ~~respect to that office or clinic;~~

22 ~~— b. Provisions of an Attorney General opinion issued specifically with respect to that~~
23 ~~office or clinic; or~~

~~1 — c. An order issued with respect to that office or clinic by a court of competent
2 jurisdiction in the Commonwealth of Kentucky.~~

~~3 — (b) A practice owned entirely by a radiologist or group of radiologists shall
4 demonstrate the following:~~

~~5 — 1. Compliance with paragraph (a)1, 4, 5, and 6 of this subsection;~~

~~6 — 2. The radiologists shall regularly perform physician services (e.g., test
7 interpretations) at the location where the diagnostic tests are performed, including
8 interpretations by or through teleradiology; and~~

~~9 — 3. The billing patterns of the practice indicate that the practice is not primarily a
10 testing facility and that it was organized to provide the professional services of
11 radiology.~~

~~12 — (c) An office or clinic owned and operated by a Qualified Academic Medical Center
13 shall demonstrate the following:~~

~~14 — 1. The physician or physicians providing care and treatment to the patients of the
15 office or clinic shall be licensed to practice in Kentucky and shall be employed by the
16 Qualified Academic Medical Center; and~~

~~17 — 2.a. The office was established and in operation prior to January 31, 2006;~~

~~18 — b. The office does not provide any services or equipment covered by the State
19 Health Plan; or~~

~~20 — c. At the time the office began providing care and treatment to patients, it was not
21 located in a county designated as a Metropolitan Statistical Area as defined by the U.S.
22 Office of Management and Budget, and there is a documented agreement of support or
23 collaboration between the Qualified Academic Medical Center and each existing~~

hospital in the county in which the office is located.]

(10) Prior to convening a show cause hearing, the cabinet shall give the person suspected or alleged to be in violation not less than twenty (20) days' notice of its intent to conduct a hearing.

(11) The notice shall advise the person of:

(a) The allegations against the person;

(b) Any facts determined to exist which support the existence of the allegation; and

(c) The statute or administrative regulation alleged to have been violated.

(12) Notice of the time, date, place, and subject matter of each hearing shall be:

(a) Mailed to all known affected persons or entities not less than ten (10) business days prior to the date of the hearing; and

(b) Published in the Certificate of Need N[n]ewsletter, if applicable.

(13) At least seven (7) [business] days prior to all hearings required or requested pursuant to KRS Chapter 216B, with the exception of hearings involving applications for or revocation of a certificate of need, all persons or entities wishing to participate as a party to the proceedings shall file an original and one (1) copy of the following with the cabinet and serve copies on all other known parties to the proceedings:

(a) OHP - Form 3, Notice of Appearance;

(b) OHP - Form 4, Witness List; and

(c) OHP - Form 5, Exhibit List and attached exhibits.

(14) Within thirty (30) days of the conclusion of the hearing, the hearing officer shall tender findings of fact and a proposed decision to the secretary.

(15) Within thirty (30) days of the receipt of the findings of fact and proposed

1 decision from the hearing officer, the secretary shall issue a final decision on the matter.

2 (16) A copy of the final decision shall be mailed to the person or his legal
3 representative with the original hearing decision filed in the administrative record
4 maintained by the cabinet.

5 (17) If a violation is found to have occurred as a result of a show cause hearing
6 conducted pursuant to subsection (1) of this section, the cabinet shall take action as
7 provided by KRS Chapter 216B.

8 (18) If the person is found to have violated any of the terms or conditions of any
9 certificate of need approval and license as a result of a show cause hearing conducted
10 pursuant to subsection (4) of this section, the cabinet shall take the following action:

11 (a) If the person had not previously been found to be in violation of the terms and
12 conditions which were made a part of the person's certificate of need approval and
13 license, the person shall be given a period of time, not to exceed sixty (60) days after
14 issuance of the cabinet's decision, in which to demonstrate that the violation has been
15 corrected. At the conclusion of this period, the cabinet shall verify that the facility or
16 service is operating in compliance with the terms or conditions of the certificate of need
17 and license at issue.

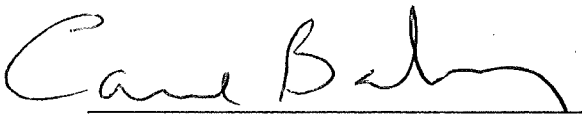
18 (b) If the cabinet is unable to verify that the facility or service has corrected the
19 violation in accordance with paragraph (a) of this subsection, or if a person who had
20 previously been found to be in violation of the terms and conditions which were a part of
21 the person's certificate of need approval and license is found in a subsequent show
22 cause hearing conducted pursuant to this section to be in violation of the terms and
23 conditions again, the matter shall be referred to the Office of Inspector General for

- 1 appropriate action.
- 2 (19) The deadlines established with respect to hearings shall be modified if agreed
- 3 to by all parties and the hearing officer.

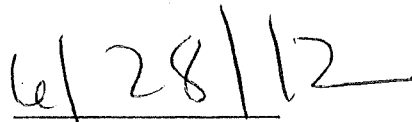
900 KAR 6:090

This is to certify that the Executive Director of the Office of Health Policy has reviewed and recommended this administrative regulation prior to its adoption, as required by KRS 156.070(4)

APPROVED:

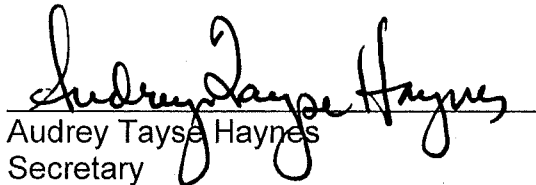


Carrie Banahan
Executive Director
Office of Health Policy

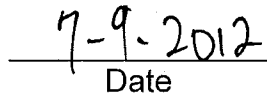


Date

APPROVED:



Audrey Tayse Haynes
Secretary
Cabinet for Health and Family Services



Date

900 KAR 6:090

PUBLIC HEARING AND COMMENTS:

A public hearing on this administrative regulation shall, if requested, be held on August 21, 2012, at 9:00 a.m. in the Public Health Auditorium located on the First Floor, 275 East Main Street, Frankfort, Kentucky 40621. Individuals interested in attending this hearing shall notify this agency in writing by August 14, 2012, five (5) workdays prior to the hearing, of their intent to attend. If no notification of intent to attend the hearing is received by that date, the hearing may be cancelled. The hearing is open to the public. Any person who attends will be given an opportunity to comment on the proposed administrative regulation. A transcript of the public hearing will not be made unless a written request for a transcript is made. If you do not wish to attend the public hearing, you may submit written comments on the proposed administrative regulation. You may submit written comments regarding this proposed administrative regulation until close of business August 31, 2012. Send written notification of intent to attend the public hearing or written comments on the proposed administrative regulation to:

CONTACT PERSON: Jill Brown, Office of Legal Services, 275 East Main Street 5 W-B, Frankfort, KY 40621, (502) 564-7905, Fax: (502) 564-7573

REGULATORY IMPACT ANALYSIS AND TEIRING STATEMENT

Administrative Regulation Number: 900 KAR 6:090

Contact Person: Carrie Banahan or Chandra Venettozzi, (502) 564-9589

1. Provide a brief summary of:

- (a) What this administrative regulation does: This administrative regulation establishes the guidelines for filing, hearing, and show cause hearing for the certificate of need program. Language in this regulation related criteria that exempts physicians from the Certificate of Need program has been deleted as it is now included in regulations – 900 KAR 6:130 – Certificate of Need criteria for physician exemption. Language was added to this regulation to clarify that if all parties agree to waive the established hearing decision date, the hearing officer must still render a decision within sixty (60) days of the filing of proposed findings and clarify that parties wishing to participate in the hearing have 7 days rather than 7 business days to provide notice. Also, language was added to reference regulation 900 KAR 6:130 for specific information about physician exemption.
- (b) The necessity of this administrative regulation: This administrative regulation is necessary to comply with the content of the authorizing statute: KRS 216B.010, 216B.085, 216B.086, 216B.090, 216B.095, 216B.990.
- (c) How this administrative regulation conforms to the content of the authorizing statutes: This administrative regulation conforms to the content of KRS 216B.010, 216B.085, 216B.086, 216B.090, 216B.095, 216B.990 by establishing the guidelines for filing, hearing, and show cause hearing for the certificate of need program.
- (d) How this administrative regulation currently assists or will assist in the effective administration of the statutes: This administrative regulation assists in the effective administration of KRS 216B.010, 216B.085, 216B.086, 216B.090, 216B.095, 216B.990 by establishing the guidelines for filing, hearing, and show cause hearing for the certificate of need program.

2. If this is an amendment to an existing administrative regulation, provide a brief summary of:

- (a) How the amendment will change this existing administrative regulation: Language in this regulation related to criteria that exempts physicians from the Certificate of Need program has been deleted as it is now included in regulation – 900 KAR 6:130 – Certificate of Need criteria for physician exemption. Language was

added to this regulation to clarify that if all parties agree to waive the established hearing decision date, the hearing officer must still render a decision within sixty (60) days of the filing of proposed findings and clarify that parties wishing to participate in the hearing have 7 days rather than 7 business days to provide notice. Also, language was added to reference regulation 900 KAR 6:130 for specific information about physician exemption.

- (b) The necessity of the amendment to this administrative regulation: This amendment is necessary to move language in this regulation related to filing of documents for to the Certificate of Need Program as well as criteria that exempts physicians from the Certificate of Need program to a new regulation – 900 KAR 6:130 –Certificate of Need criteria for physician exemption. Language was added to this regulation to clarify that if all parties agree to waive the established hearing decision date, the hearing officer must still render a decision within sixty (60) days of the filing of proposed findings and clarify that parties wishing to participate in the hearing have 7 days rather than 7 business days to provide notice. Also, language was added to reference regulation 900 KAR 6:130 for specific information about physician exemption.
- (c) How the amendment conforms to the content of the authorizing statutes: The amendment carries out the requirements of KRS 216B.010, 216B.085, 216B.086, 216B.090, 216B.095, 216B.990 which relate to hearings and show cause hearings.
- (d) How the amendment will assist in the effective administration of the statutes: This amendment will provide instructions related to hearing and show cause hearing for the orderly administration of the Certificate of Need Program.

- 3. List the type and number of individuals, businesses, organizations, or state and local governments affected by this administrative regulation: This administrative regulation will affect health care providers governed by the Certificate of Need law, citizens who use health care in Kentucky, health planners in the Certificate of Need Program, and local communities that plan for, use, or develop community health care facilities. Approximately 160 applications for Certificate of Need are received annually.
- 4. Provide an analysis of how the entities identified in question (3) will be impacted by either the implementation of this administrative regulation, if new, or by the change, if it is an amendment, including:

- (a) List the actions that each of the regulated entities identified in question (3) will have to take to comply with this administrative regulation or amendment: As the guidelines for hearing and show cause hearing for the certificate of need program set forth in the administrative regulation are currently established and operational, no new action will be required of regulated entities to comply with this regulation.
 - (b) In complying with this administrative regulation or amendment, how much will it cost each of the entities identified in question (3): As the guidelines for hearing and show cause hearing for the certificate of need program set forth in the administrative regulation are currently established and operational, no cost will be incurred by regulated entities to comply with this regulation.
 - (c) As a result of compliance, what benefits will accrue to the entities identified in question (3): Entities are benefited as information related to filing and physician exemption criteria is being moved to another regulation making this regulation clearer and more concise.
- 5. Provide an estimate of how much it will cost the administrative body to implement this administrative regulation:
 - (a) Initially: No cost
 - (b) On a continuing basis: No cost
- 6. What is the source of the funding to be used for the implementation and enforcement of this administrative regulation: No funding is necessary since there is no cost to implementing this administrative regulation.
- 7. Provide an assessment of whether an increase in fees or funding will be necessary to implement this administrative regulation, if new, or by the change if it is an amendment: No increase in fees or funding is necessary.
- 8. State whether or not this administrative regulation established any fees or directly or indirectly increased any fees: This administrative regulation does not establish any fees and does not increase any fees either directly or indirectly.
- 9. TIERING: Is tiering applied? (Explain why or why not)
Tiering was not appropriate in this administrative regulation because the administrative regulation applies equally to all those individuals or entities regulated by it.

FISCAL NOTE ON STATE OR LOCAL GOVERNMENT

Regulation No. 900 KAR 6:090 Contact Person: Carrie Banahan or Chandra Venettozzi

1. Does this administrative regulation relate to any program, service, or requirements of a state or local government (including cities, counties, fire departments, or school districts)?

Yes X No

If yes, complete questions 2-4.

2. What units, parts or divisions of state or local government (including cities, counties, fire departments, or school districts) will be impacted by this administrative regulation? This amendment may impact any government owned, controlled or proposed healthcare facilities or services.
3. Identify each state or federal statute or federal regulation that requires or authorizes the action taken by the administrative regulation KRS 216B.010, 216B.085, 216B.086, 216B.090, 216B.095, 216B.990.
4. Estimate the effect of this administrative regulation on the expenditures and revenues of a state or local government agency (including cities, counties, fire departments, or school districts) for the first full year the administrative regulation is to be in effect. None.
- (a) How much revenue will this administrative regulation generate for the state or local government (including cities, counties, fire departments, or school districts) for the first year? No impact to revenues.
 - (b) How much revenue will this administrative regulation generate for the state or local government (including cities, counties, fire departments, or school districts) for subsequent years? No revenues will be generated to state or local government.
 - (c) How much will it cost to administer this program for the first year? None.
 - (d) How much will it cost to administer this program for subsequent years? None.

Note: If specific dollar estimates cannot be determined, provide a brief narrative to explain the fiscal impact of the administrative regulation.

Revenues (+/-): None
Expenditures (+/-): None
Other Explanation: None